In the High Court of Judicature for Rajasthan
Jaipur Bench

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Cr. Misc. Petition No.608/2003
Trilochan Singh ***Versus*** State

Date of Order ::: 18/09/07

Hon'ble Mr. Justice Ajay Rastogi

Mr. Anurag Sharma, for petitioner
Mr. Arun Sharma, Public Prosecutor for State.

Petitioner has invoked inherent powers of this Court U/s 482 CrPC for quashing proceedings initiated against him for offence U/s 498-A, IPC in Cr.Case No.296/02 pending before Judl. Mag. No.4, Bharatpur.

Petitioner was married to respondent No.1 on 19/05/89 and one Master Shanu was born from their wedlock on 07/09/90 but due to some differences, they could not maintain their marital relations. Respondent NO.1 lodged FIR-571/97 at police station Mathura Gate, Bharatpur against petitioner for offence U/S 498-A, 406, 379 & 323, IPC. A separate application was filed seeking divorce by her before District Judge, Bharatpur. Pending their matrimonial dispute, application was filed U/s 13-B of Hindu Marriage Act for seeking divorce by consent in terms of compromise, in which it was specifically pleaded that she would retain custody of minor son

(Master Shanu) and petitioner would pay Rs.70,000/- as full & final towards maintenance. It was further agreed that in view of amicable settlement through compromise reached between the parties, criminal case registered under FIR-571/97 was sought to be withdrawn by her; as the amount agreed was paid by petitioner, a decree for divorce on the basis of aforesaid compromise was granted in her favour U/s 13-B of the Act vide order dt. 12/05/98 (Ann.2).

However, after investigation, police also filed final report (Ann.3) on 30/04/98 in criminal case registered against petitioner. But it appears that respondent NO.1 later on submitted protest petition and after recording statement U/s 200 & 202, CrPC, learned trial Magistrate took cognizance against petitioner for offence U/s 498-A IPC vide order dt. 19/12/2003.

Counsel for the petitioner submits that once compromise has been arrived at between parties – on the basis whereof, decree for divorce has also been granted in her favour and as per which, it was agreed between the parties that she would withdraw instant criminal case and in such circumstances, if he is still allowed to be prosecuted, it will be great injustice to him. In support, Counsel placed reliance on the

judgment of Apex Court in **Ruchi Agarwal Vs. Amit Kumar Agrawal (2005(3) SCC 299).**

Public Prosecutor supported the order impugned and submits that even if compromise has been reached between the parties, and it is agreeable, still after recording her statement U/s 202, CrPC, if case is made out, learned Magistrate has not erred in taking cognizance under order impugned and it can be his defence during trial.

I have considered rival contentions of both the parties and with assistance examined material on record. It appears that on consent, decree of divorce has been granted – reference whereof has been made in compromise itself reached between the parties on 21/01/98 and in para 3 whereof, it has been agreed that in view of compromise, she would withdraw criminal proceedings initiated on FIR-571/97 registered at PS Mathura Gate (Bharatpur) against petitioner for offence U/Ss 498-A, 406, 323, 379, IPC, and after accepting amount towards final settlement to the tune of Rs.70,000/- which has been paid by petitioner, still after obtaining decree of divorce U/s 13-B of the Act. She had proceeded further in getting her statement recorded U/s 200 & 202, CrPC – as a result whereof, cognizance has

been taken against petitioner for offence U/s 498-A IPC.

In the facts of instant case, this Court is of the opinion that respondent No.1 having received relief without contest, which she wanted on the basis of terms of compromise, she was under obligation to carry out terms of compromise with regard to withdrawal of criminal case which she has agreed to – on the basis whereof, decree of divorce by consent was granted to her and in such circumstances, criminal complaint which she is now insisting upon is nothing but to harass petitioner. In similar circumstances, Apex Court in **Ruchi Agawal Vs. Amit Agrawal** (supra), observed ad infra:

> "Therefore, we of the opinion that the appellant having received the relief she wanted without contest on the basis of terms of the compromise, we cannot now accept the argument of the learned counsel for the appellant. In our opinion, the conduct of the appellant indicates that the criminal a complaint from which this appeal arises was filed by the wife only to harass the respondents."

In view thereof, if criminal proceedings out of instant petition arises, are allowed to continue, it would be an abuse of process of the court and

in such circumstances, such proceedings deserve to be quashed .

Consequently, misc. petitions succeeds and is hereby allowed alongwith stay petition No. 469/03. Proceedings initiated against petitioner for offence U/s 498-A, IPC in Cr. Case No.296/02 pending before Judl. Mag. NO.4, Bharatpur are hereby quashed and set aside. Record be sent back to court below.

(**Ajay Rastogi), J.**

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